

LOIS A. MAYER

IBLA 71-175

Decided August 24, 1972

Appeal from a decision of the Anchorage land office rejecting final proof and cancelling homestead entry Anch-062968.

Affirmed.

Alaska: Homesteads -- Homesteads (Ordinary): Cultivation --
Homesteads (Ordinary): Final Proof -- Homesteads (Ordinary):
Residence

The cancellation of a homestead entry and the rejection of the final proof are proper when the final proof on its face shows a failure by the entrywoman to satisfy the residence and cultivation requirements of the homestead law.

Equitable Adjudication: Substantial Compliance

Equitable adjudication is not available to a homestead entrywoman in the absence of substantial compliance with the requirements of the homestead law.

APPEARANCES: Lois A. Mayer, pro se.

OPINION BY MR. RITVO

Mrs. Lois A. Mayer has appealed from a decision dated December 2, 1970, of the land office, Anchorage, Alaska, rejecting her homestead final proof and cancelling her claim on the ground that the final proof showed on its face a failure to comply with the residence and cultivation requirements of the homestead law and regulation.

On August 3, 1965, Lois A. Mayer filed a notice of location of settlement or occupancy claim for 160 acres of unsurveyed land in T. 30 N., R. 5 W., Seward Meridian, Alaska. According to information submitted by Mrs. Mayer, during her first year she cleared the

property lines of brush and set aside logs for her cabin. After being granted a six months extension Mrs. Mayer established residence on the entry on May 28, 1966. Her original dwelling consisted of a tent. Not until July 1969, was a metal building, 11 feet x 14 feet, moved onto the land and used in conjunction with the tent.

In Mrs. Mayer's final proof, filed October 16, 1970, she listed the following periods of residence: in 1966, from May to mid-September; in 1967, from late May to the end of August; in 1968, from late May until late September; in 1969, from late May until late September; and in 1970, from April through October. Mrs. Mayer's periods of residence clearly failed to comply with the requirements of the homestead law and regulation that seven months a year be spent on the land for at least three years. 43 CFR 2567.5(a)(2). As to Mrs. Mayer's efforts to cultivate the land, her final proof shows the sole cultivation of the land to have been 25 acres in October 1970. She had admitted in a letter of August 3, 1970, to the Bureau of Land Management that she had not cleared nor cultivated any of her land as of that date. The homestead law requires that at least 1/16th of the land be cultivated in the second year and 1/8th thereafter. 43 CFR 2567.5(b).

It was not until after the expiration date of Mrs. Mayer's entry on August 2, 1970, that she proceeded to clear 25 acres and plant it with clover and alfalfa. Mrs. Mayer took this action after she received a letter dated September 16, 1970, entitled "Submission of Final Proof Required." The letter from Julianne Gibbons, Chief Land Adjudicator, Bureau of Land Management, Anchorage, Alaska, was the standard procedure under 43 CFR 2511.3-4(a)(1), allowing Mrs. Mayer 30 days to appear before the land office and file a final proof and show cause for the delay in filing. Although Mrs. Mayer was informed in a letter dated March 30, 1970, from the Bureau of Land Management that the Department had no authority to waive the cultivation requirements, she interpreted the letter from Mrs. Gibbons as granting her a 30-day extension in which to clear and cultivate her land. In another letter from Mrs. Gibbons dated October 7, 1970, Mrs. Mayer was explicitly told that "[t]here is no way, at this time, to cure deficiencies in your compliance prior to expiration of the statutory life of your claim." However, Mrs. Mayer continued to cultivate and filed her final proof on October 16, 1970. On December 2, 1970, J. A. Hagans, Acting Chief Adjudicator, Land Office, Anchorage, Alaska, rejected Mrs. Mayer's final proof and application to enter, and canceled her claim. Notice of appeal was filed on January 22, 1971.

Appellant admitted her failure to reside on the land for the required period of seven months a year for at least three years. She also did not deny her failure to cultivate the required 1/16th during the second year and 1/8th thereafter. Mrs. Mayer asserts that she had made a good faith effort to comply with the regulations and she asks for equitable relief. Following is a list of misfortunes which Mrs. Mayer claims kept her from clearing her land: (1) flare up of an earlier fracture of two lower vertebrae; (2) no access road to her property prior to August 1970; (3) unfavorable climatic conditions; and (4) inability to obtain assistance from local contractors.

It is proper to reject the homestead entry final proof and cancel the entry when the final proof shows on its face that the entrywoman did not comply with the residence and cultivation requirements of the homestead laws. Ronald H. Echola, A-30831 (November 16, 1967); Gary L. Owen, A-30768 (June 20, 1967). Mrs. Mayer, in a letter to the land office dated August 3, 1970, stated that there was "[n]o dwelling, no clearing, no cultivation." Mrs. Mayer failed to meet both the residency and the cultivation requirements. Failure to maintain residence for the prescribed periods of time is a proper basis for cancellation of entry. Melvin O. Wright, A-30839 (December 29, 1967). The appellant's failure to do any cultivation prior to the expiration of the five-year period was obviously a valid basis in itself for cancellation of her entry. Carl Glanville v. Donald Penman, A-30258 (May 4, 1965).

While Mrs. Mayer claims a series of misfortunes as justification for her failure to meet the above requirements she never notified the local land office of her misfortunes. 43 CFR 2511.4-3(b). In any event, her difficulties do not relieve her of the necessity to comply with the residence requirements nor justify a reduction in cultivation requirements. Mrs. Mayer's final efforts to clear and cultivate her land did not diminish her failure to comply with the homestead law within the statutory life of the entry.

Since there has not been substantial compliance with the requirements of the homestead law, there is no basis for evoking equitable adjudication. United States v. Russell G. Wells, 78 I.D. 163, 165 (1971).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision of the land office is affirmed.

Martin Ritvo
Member

We concur:

Joan B. Thompson
Member

Douglas E. Henriques
Member

